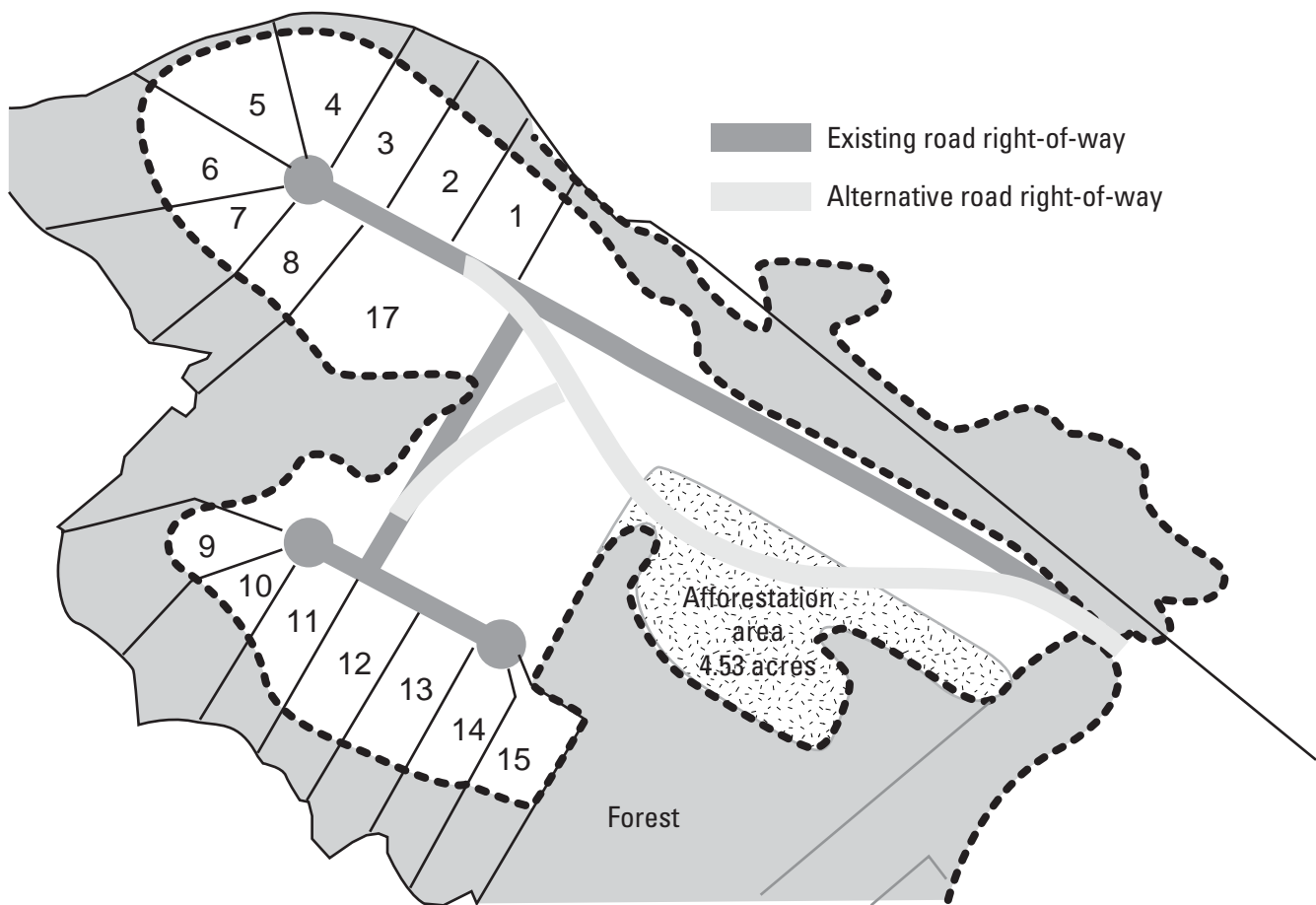


Attachment A - Map 1. Location of existing and alternative road right-of-ways considered at Home Port subdivision in Queen Anne's County, Maryland.

Map 1. Location of existing road and alternative road right-of-ways considered at Home Port subdivision in Queen Anne's County, Maryland



Attachment B - Correspondence by Mr. Waterman dated September 18th, 2002.



**WATERMAN
REALTY CO.**

109 COUNTRY DAY ROAD, SUITE 1
WATERMAN BUSINESS PARK
CHESTER, MD 21619

BUS. (410) 643-5005
FAX (410) 643-5213

September 18th, 2002

Dr. Cherry Keller
U. S. Fish & Wildlife Services

FAX: 410-269-0832

Re: Preliminary Draft
HomePort HCP

Dear Dr. Keller:

In connection with the remand to you by the Courts, and the Appeals Court decision which pointed out that insufficient evidence of the impracticality of changing the plan and road layout, I furnish the following:

**IMPRATICALITY OF RELOCATING THE ENTRANCE ROAD INTO
HOMEPORT, AS OF SPRING, 1999**

1. Winchester Creek Ltd. Partnership owned only a small frontage on the existing County Road system, to which we were required to connect.

The land immediately to the left of the starting point of our road was and is owned by Mr. Nelson Polun, who declined to consider our offer to purchase the property, or to combine it with our site in exchange for a percentage of ownership in the project.

We, therefore, have no option as to the starting point of the road. From it's starting point the road design was subject to the design standards of Queen Anne's County Public Works, which limit the curvature, sight distance, etc. (See excerpts attached).

The enclosed "alternative road design for HomePort" shows the maximum relocation possible under County Regulation.

Curvature of the road so as to move it away from the Nesbit woodland on the right would have been impractical, as by the time the road reached any significant distance from the Nesbit woods, the road and woods would be separated by the dense stand of phragmites growing on the wetlands extending from the Creek.

The scientific literature says Delmarva Fox Squirrels avoid crossing water and wet areas and if this is so, squirrels leaving the Nesbit woods to enter the Home Port property would be crossing the road where it is closest to the Nesbit woods.

Of perhaps more importance, moving the road away from the Nesbit woodland moves it closer to the woodland area of Home Port, and this area is a much larger acreage than the Nesbit woodland, (which is isolated by the roadway into the Templeton property, an extremely large pile of excess dirt from S.H.A. construction of Rt. 50, placed at it's location at the direction of Mr. Gerber, (Manager of the Nesbit farm), and farm fields).

The combined contiguous woodland on the Nesbit and Templeton lands together with the woodland on lot 18 Home Port totals 8.51 acres (see McCrone Plan for "Alternate Road Design for Home Port").

While there are possible connections to larger wooded sites by narrow hedgerows, this combined acreage is too small for the "home range" of Delmarva Fox Squirrels, based on the literature.

Were the road shifted away from this area, it would still be close to the larger part of the combined area (as it must start at it's current origin, the only point where Winchester Creek Ltd. Partnership had a connection).

Shifting the road to the west would bisect the afforestation area and would result in impacts to the existing 19+ acres of connected woodland (Gies 5.65 Acres & Polun 4.04 Acres & lot 16 OS 9.4 Acres).

This 19 acres is large enough to establish a "home range", and has a significant connection to contiguous woodland on lots 14 through 6, making an area large enough for Delmarva Fox Squirrel breeding.

Shifting the road would be counter-productive, as any movement away from the marginal Nesbit woodland would bring it closer to the significant on site mature forest.

The Home Port woodland is large enough to be the home range of Delmarva Fox Squirrels (about 16 acres per the literature), whereas the Nesbit woodland is not, so that relocating the road away from the Nesbit woodland would be detrimental to a breeding population of Delmarva Fox Squirrels.

Even if the above factors are ignored, the relocation would be impractical for other reasons as follows:

1. Engineering fees to redesign the road and sewer system to a new location would cost approximately \$6,800 and would necessitate a complete new review by the County Planning Commission, the Maryland Critical Areas Commission, and a New Growth Allocation Hearing before the County Commissioners.

The Growth Allocation required for the existing plan is 26.533 acres of the total acres in the Home Port tract.

The Critical Area rules require that when a subdivision occurs, Resource Conservation Area parcels less than 20 acres must be designated LDA. (See attached Critical Area Commission policy reference Development Envelopes).

Moving the entrance road would result in Lot 16 (now 21.470 acres), becoming less than 20 acres, and the Growth Allocation required would have become 55.949 acres.

In the original approval process it was made clear that the County would limit the Growth Allocation for this project and would not approve an amount significantly greater than originally proposed.

(Personal conversations with two County Commissioners confirmed this).

Growth allocation is limited, and the County views it as a very valuable commodity, measuring all requests for changes against potential economic benefits from the project.

Had we chosen a re-design we would have faced significant time and process delays as well:

1. A new Concept Plan would be needed prior to re-applying for Growth Allocation.
Engineering cost estimate: \$2,800, four months time.
2. New Growth Allocation hearings would be required.
Engineering cost estimate: \$5,800, one years time.
3. A new Preliminary Plan would be required if Growth Allocation were approved.
Engineering cost estimate: \$2,500, four to six months time.
4. Lastly, a new Final Plat.
Engineering cost estimate: \$1,500, two months time.

Total costs for engineering and survey services made necessary by a road relocation would be \$26,200 and interest on invested money would exceed \$50,000 annually, or approximately \$100,000.

New applications would void the original approvals and, therefore, we would have run the risk of having no project at all.

Since Mr. Gerber, (a Plaintiff in the Federal case), has opposed this project with legal counsel at every step in the approval process (beginning in 1992). It is logical to

assume he would continue to do so. His opposition has included appearing at every public hearing, filing appeals to the County Board of Appeals, filing at least five Circuit Court suits attempting to prevent approvals of this project, and appealing two of these to the Maryland Court of Special Appeals. It is reasonable to assume he would have taken the same steps in any new application, so that the project could have been delayed for several years and additional significant legal costs would have been incurred, probably exceeding \$100,000.

Relocating the entrance road would have been financially disastrous, not just impractical.

Very truly yours,

Mareen D. Waterman

MDW:vo
Encl.

Attachment C - Queen Anne's County Chesapeake Bay Critical Area Program -
Refinements Effective - November 18, 1997.

Note: Because of its length, only the table of contents and the pages which are cited
are printed here (pages 1, 15 and 21-23). The complete document is available for
viewing at CBFO.

**QUEEN ANNE'S COUNTY
CHESAPEAKE BAY CRITICAL AREA
PROGRAM**

Queen Anne's County, Maryland

Enacted - June 4, 1996
Effective - July 19, 1996

Amendment #1 Effective - October 17, 1997
Refinements Effective - November 18, 1997

QUEEN ANNE'S COUNTY CRITICAL AREA PROGRAM

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SECTION I

PROGRAM FOR DEVELOPMENT

Queen Anne's County adopted its Critical Area Program and the Queen Anne's County Chesapeake Bay Critical Area Ordinance in March 1989 to give special emphasis to managing land use in the sensitive coastal areas. The objective of the Queen Anne's Critical Area Program is to accommodate growth while protecting the water quality and conserving habitat areas in the Critical Area. Based on the requirements of the Critical Area Law and the Critical Area Criteria Queen Anne's County has established land use policies for development which address these ecological concerns.

The primary means of implementing the Critical Area Program is the Queen Anne's County Chesapeake Bay Critical Area Ordinance. The Chesapeake Bay Critical Area Ordinance regulates development activities and resource utilization activities, e.g., agriculture and forestry in the Critical Area. It supplements existing land use regulations by imposing the standards and requirements recommended in the Queen Anne's County Critical Area Program and required by the Critical Area Criteria. The following section sets forth the Queen Anne's County program for development in the Critical Area.

LAND USE MANAGEMENT CLASSIFICATIONS

The Critical Area Criteria provide that in order to accommodate growth and also provide for the conservation of habitat and protection of water quality in the Critical Area the County must recognize existing land uses and development. In this respect, the Criteria recognize three types of development areas which are defined below:

1. Intensely Developed Area (IDA) (COMAR 27.01.03);

IDAs include any area of 20 or more contiguous acres, or the entire upland portion of a municipality within the Critical Area (whichever is less) where residential, commercial, institutional and/or industrial development is predominant and relatively little natural habitat occurs.

In addition, an IDA has one of the following characteristics:

- Housing density equal to or greater than four dwelling units per acre;
- Industrial, institutional or commercial uses concentrated in the area; or
- Public sewer and water collection and distribution systems currently serving the area and housing density greater than three dwelling units per acre.

GRANDFATHERED LOTS

Grandfathered lots are segmented into several time periods by the Criteria. Lots that were recorded prior to June 1, 1984 are grandfathered. Lots that were recorded between June 1, 1984 and March 25, 1989 and related implementing provisions are grandfathered if "interim findings" were made by the approving authority. Parcels of land exceeding 15 acres in size on plats recorded prior to December 1, 1985 are also grandfathered.

New single family dwellings are permitted on vacant grandfathered lots in Resource Conservation Areas. New single family dwellings are permitted on grandfathered lots in Limited Development Areas and Intensely Developed Areas, if such uses are permitted by the County's Zoning Ordinance. Any development that occurs on grandfathered lots must comply insofar as possible with the requirements of the County's Critical Area Program. All development on grandfathered lots must comply with the requirements of the Water Dependent Facilities and Habitat Protection sections of the Queen Anne's County Critical Area Program, unless a variance is granted by the Board of Appeals. The County Critical Area Ordinance provides for and encourages the reconfiguration of lots under single ownership without loss of density as permitted under the terms of the Queen Anne's County Zoning Ordinance.

GROWTH ALLOCATION

The Chesapeake Bay Critical Area Criteria provide for the designation of new Intensely Developed Areas (IDAs) and Limited Development Areas (LDAs) in portions of the Queen Anne's County Critical Area originally designated Resource Conservation Area (RCA) or Limited Development Area (LDA). Provisions relating to what is commonly called the "Growth Allocation" are contained in COMAR 27.01.02.06 of the Critical Area Criteria and Natural Resources Article, Chapter 602. The area of expansion permitted through use of Growth Allocation is limited to five (5) percent of the County's total Resource Conservation Area (RCA), less State tidal wetlands and federally owned lands.

Based on the amount of RCA mapped in Queen Anne's County, the total Growth Allocation available, county wide, is 1,528 acres. Assignment of Growth Allocation requires prior approval by the Critical Area Commission. All land management classification conversions will count against the County's total Growth Allocation.

The Critical Area Criteria require that the County coordinate its use of the Growth Allocation with the municipalities. In planning for future expansion of Intensely Developed and Limited Development Areas Queen Anne's County established a process that accommodates the future growth needs of the municipalities.

A process was established by the County, in cooperation with the Towns, whereby the County assigned Growth Allocation to designated growth areas within and adjacent to the municipalities.

4. The development incorporates the comments and recommendations of County and the Maryland Fish, Heritage and Wildlife Administration in the project design.
5. The developer executes restrictive covenants that guarantee maintenance of any required open space areas.

Computing Use of the Growth Allocation. The manner in which growth allocation for a proposed project will be subtracted from the total County growth allocation will be determined on a project-by-project basis, subject to Critical Area Commission approval. In determining the area to be subtracted the County will use the following guidelines:

Subdivision of any parcel of land that was recorded as of December 1, 1985, and classified as RCA or LDA, where all or part of the parcel is identified by the County as a Growth Allocation area, shall result in the acreage of the entire parcel counting against the Growth Allocation, unless the following conditions apply:

1. On Qualifying Parcels as described in 4. below, on which a change in classification is requested, a single development envelope will be specified, the acreage of which would be counted against the Growth Allocation. The envelope will include: a) individually owned lots; b) any required Buffers less than 300 feet in width; c) impervious surfaces, utilities, storm water management measures, on-site sewage disposal measures; d) any areas subject to human use such as active recreation areas; and e) any additional acreage needed to meet the development requirements of the criteria.
2. The remainder of the parcel may not count against the County's Growth Allocation if it is contiguous and at least 20 acres in size, retained its natural features or its use by resource utilization activities (agriculture, forestry, fisheries activities, or aquaculture). A Forest Management Plan is required for any forested areas in the undeveloped portion of the parcel. Replanting should be accomplished on lands abandoned from agriculture.
3. In the case of Growth Allocation being applied in an RCA area, a 300 foot naturally vegetated Buffer is strongly encouraged, and in the case where it is provided, the Buffer shall not be deducted from the County's Growth Allocation, even if that Buffer does not meet the 20-acre minimum.
4. Qualifying Parcels: Parcels of land that qualify for application of the above accounting guidelines are the following:
 - (a) Those parcels designated as new IDAs which are located within an LDA or adjacent to an existing IDA providing such designation:

- (1) minimizes adverse impacts to agriculture, forest lands, fisheries or aquaculture;
 - (2) minimizes adverse impacts to Habitat Protection Areas; and
 - (3) optimizes benefits to water quality.
- (b) Those parcels designated as new LDAs which are located adjacent to existing LDAs or IDAs providing such designation conforms to the requirements of 4 (a)(1), (2) and (3).
 - (c) Those parcels designated as new IDAs or LDAs which are consistent with an adopted Growth Sub-Area Plan
 - (d) Those parcels designated as new IDAs or LDAs which are located in the RCA and are proposed for projects that have been determined to be of substantial economic benefit to residents of the County and/or meet a recognized public need, providing such designation conforms to the requirements of 4(a)(1), (2), and (3).
5. On all other parcels that receive Growth Allocation and that do not meet these qualifications the entire parcel of record as of December 1, 1985 will be deducted from the total County Growth Allocation.

Growth Allocation and the Municipalities. It is the intent of the County to ensure that the growth needs of the incorporated towns are addressed as development occurs in and around the municipality. The basis for determining the growth allocation needs of the municipalities will be the Sub-Area Plans developed in cooperation with the municipality. Specific properties identified in the Sub-Area planning process for various types of development that may require growth allocation will be given priority for the use of the County's Growth Allocation. The County will set aside 75 percent of its growth allocation in a Growth Management Pool for implementation of the Sub-Area Plans and for use with projects within the corporate limits. The following are the criteria that the County will follow in approving growth allocation for municipal projects:

- Growth allocation will be committed to the municipality when the Critical Area Commission and elected officials of the municipality have approved an amendment to the municipalities' Critical Area Program permitting a site to be reclassified to an LDA or IDA provided the proposed amendment is consistent with the Sub-Area Plan; and
- Growth allocation will be awarded to the municipality on an "as requested" basis if the project site is either annexed into the adjacent municipality or is already part of the municipal corporation provided the proposed amendment is consistent with the Sub-Area Plan;

- The growth allocation set aside for the Queen Anne's County municipalities agreed upon in 1989 is as follows:
 - Queenstown - 160 acres
 - Centreville - 186 acres
- The Queen Anne's County Critical Area Program may be amended to provide that the remaining acres of municipal set aside may be reallocated to the County if any municipal set aside is not assigned within five (5) years.

Summary of County Growth Allocation Implementation

The following summarizes the Queen Anne's County Growth Allocation commitments.

Growth Allocation Summary:

Total County Growth Allocation	1,528.0 acres
Pre-Mapped	153.0 acres
Awarded	16.4 acres
Balance Available	1,358.6 acres
Growth Management Pool	672.0 acres
Centreville	186.0 acres
Queenstown	160.0 acres
- Pre-mapped	40.0 acres
General Pool	339.0 acres

Growth Allocation and Growth Sub-Area Pre-Mapping

The following map(s) designate areas within a growth sub-area which are pre-mapped for possible County award of growth allocation. These areas are designated for future development by an adopted growth sub-area plan and either have, or are recommended to have, zoning classifications which permit development consistent with a Limited Development Area (LDA) or Intensely Developed Area (IDA) Critical Area classification.

Growth allocation is a scarce and valuable commodity of the County. Pre-mapping does not guarantee actual award of growth allocation for any pre-mapped site. Every effort should be made to sensitively design developments in pre-mapped areas to minimize the amount of needed growth allocation. The County may not grant project approvals or award growth allocation to developments which do not limit, to the extent practical, the amount of land needed for growth allocation.

Identification of site features should be done in order to alert the County and the Critical Area Commission that habitat protection area issues could restrain future development. All Critical Area criteria must be met at the time of project development. The approval of growth allocation by the

Attachment D - Queen Anne's County Planning Commission Minutes - January 9, 1997.

QUEEN ANNE'S COUNTY PLANNING COMMISSION MINUTES JANUARY 9, 1997

The Queen Anne's County Planning Commission met on Thursday, January 9, 1997 at 8:45 a.m. The following members were present: Dr. James Foor, Loring Hawes, Anne Seward, E.M. Pusey and Joyce Van Orden.

Also present were Steven Kaii-Ziegler, Planning Director, Mark McDonnell, Development Review Chief; J. Steven Cohoon, Planner I; Barry Griffith, Community Planner; Faith Elliott-Rossing, Planner I; and Christopher F. Drummond, Esq.

Dr. Foor welcomed Mrs. Van Orden as a new member of the Planning Commission. Dr. Foor also announced that Mrs. Karen Oertel was appointed by the County Commissioners to fill a vacancy on the Planning Commission. However, Mrs. Oertel's husband became ill before the Planning Commission meeting and she was required to be with him at the hospital. Dr. Foor indicated that Mrs. Oertel expressed her regrets for not being able to appear at her first Planning Commission meeting.

The minutes of the November and December meetings of the Planning Commission were approved with various typographical and syntactical corrections.

Dr. Foor then recognized Bill Crowding, a registered surveyor from Chestertown. Mr. Crowding represents GCF, Inc. Dr. Foor reminded the Planning Commission that it had requested the appearance of a representative of GCF, Inc. to justify further extensions of the approved site plan (MASP# 03-91-02). The applicant has sought a number of extensions of the site plan approval over the past six to nine (6-9) months. The Planning Commission granted a 30 day extension at its December, 1996 meeting, but indicated that it wished to hear from the applicant as to why additional extension extensions should be granted. Mr. Crowding explained that the principal of GCF, Inc., Sydney Ashley, had contracted to have the stormwater management facilities constructed. That contract was signed and finalized in early October, 1996. However, Mr. Ashley did not realize that his grading permit with the Soil Conservation Service had expired. As a result, a new sediment and erosion control plan needed to be presented to SCS. SCS approved the new plan on November 25, 1996. That permit will be good for two (2) years. By the time the SCS permit was issued, the weather conditions made excavation impossible. Mr. Crowding indicated that the required curb stops have been ordered and delivered to the site. The required landscaping has been ordered, but will not be delivered to the site until the stormwater management excavation and facilities are completed. Mr. Crowding fully expected that all required work will be completed by early Spring, 1997.

Upon review and further discussion, the following motion was made by Mr. Pusey, seconded by Ms. Seward, and passed by voice vote:

RESOLVED that the Planning Commission extends site plan approval for GCF, Inc. (MASP #03-91-02) for an additional 90 days through the Planning Commission's meeting on April 10, 1997, the Planning Commission expressly informing the applicant, however, that further extensions of site plan approval are unlikely.

Dr. Foor then recognized Tom Davis, McCrone, Inc., Centreville, who requested an extension of the conditionally approved site plan for Gerald Boismain, for the Kent Island Depot project (MASP # 04-96-18) . Mr. Davis reminded the Planning Commission that it approved the commercial development of Mr. Boismain's property at the October, 1996 meeting. Mr. Boismain is in the process of negotiating with various banks or other financial institutions to secure necessary construction and permanent financing. Mr. Davis expects Mr. Boismain to be in a position to proceed with construction within the next several months.

Upon review and further consideration, the following motion was made by Mr. Hawes, seconded by Mr. Pusey, and passed by voice vote:

RESOLVED that the Planning Commission extends conditional site plan approval for the Kent Island Depot project (MASP #04-96-18) for an additional 90 days through the Planning Commission's meeting on April 10, 1997.

The Planning Commission then considered the request of Michael J. Keene for both preliminary and final major administrative subdivision approval (Subd. 04-96-087). Tom Davis, McCrone, Inc., Centreville, appeared on behalf of the applicant. Mr. Davis explained that Mr. Keene, together with the record owners of ten (10) existing lots of record in the Brightwood subdivision, propose to amend the lot lines in the Brightwood subdivision to permit the creation of a 50' wide right-of-way in connection with a planned dedication of the right-of-way to the county road system. The property consists of a total of 171.1 acres with each of the lots in excess of 20 acres. The property was subdivided in the 1980's. The existing right-of-way met private road standards in existence at the time of subdivision. Mr. Davis noted, though, that the private road actually meets virtually all of the public road standards of the County. Mr. Keene and the lot owners will be responsible for bringing the road completely to county road standards before it is accepted in the county road system. None of the lots is reduced below 20 acres as a result of the proposed administrative subdivision. Dr. Foor recognized Gary Moore of the Queen Anne's County Department of Public Works. Mr. Moore indicated that his Department is willing to accept the right-of-way into the county road system provided that is brought fully into compliance with public roads standards. He also indicated that the 50' proposed road is acceptable as 50' width was the prevailing public road standard when the Brightwood right-of-way was constructed in the 1980's.

Mr. Davis then reviewed the basis upon which Mr. Keene and the lot owners seek both preliminary and final subdivision approval at the same meeting as is required by Section 7(c)(4) of the Planning Commission Rules. Mr. Davis noted that all agency comments have been addressed and plats signatures have been obtained. Consequently, the public interest is

served by eliminating additional agency review and processing time. Mr. Davis noted that the purpose of the administrative subdivision is quite simple. It only asks for minor modifications of existing lots of record to remove the right-of-way from within the subdivided lots so that it may be dedicated to the County. Mr. Davis also noted that the applicants' request for preliminary and final subdivision approval was made prior to the 25 day administrative cut-off period. As a result, the public has had at least 25 days to review the proposal. He also noted that the Department of Planning and Zoning has determined that the application is in full compliance with the Queen Anne's County Zoning Ordinance and all issues have been addressed.

Mr. Hawes moved that the Planning Commission consider both preliminary and final approval at the same meeting. The motion was seconded by Ms. Seward. Dr. Foor then called the question which passed unanimously, with Dr. Foor voting to constitute the fifth member in favor of the motion as is required by Section 7(c)(4) of the Planning Commission rules.

Upon review and further consideration, the following motion was made by Mr. Pusey; seconded by Mr. Hawes, and passed by voice vote:

RESOLVED at the request of Michael Keene, et. al., for major preliminary subdivision approval (Subd. # 04-96-087) involving the reconfiguration of ten (10) existing lots of records on 171.18 acres of land on Kent Pointe Road, known as the Brightwood subdivision, be and is hereby approved so that the applicants may improve the 50' right-of-way to county roads standards for dedication into the county road system.

Upon review and further consideration, the following motion was made by Ms. Seward, seconded by Mr. Hawes, and passed by voice vote:

RESOLVED at the request of Michael Keene, et. al., for final subdivision approval (Subd. #14-96-087) involving the reconfiguration of ten (10) existing lots of records on ten (10) acres of land on Kent Pointe Road, known as the Brightwood subdivision, be and is hereby approved so that the applicants may improve the 50' right-of-way to county road standards for dedication into the county road system.

The Planning Commission then considered the request of the Queen Anne's County Board of Education for an amendment to the approved site plan (MASP 04-96-06) for the Kent Island High School on Old Love Point Road in Stevensville. Tom Davis, McCrone, Inc., Centreville, appeared on behalf of the Board of Education. Mr. Davis reminded the Planning Commission that it approved the site plan for the high school at its August, 1996 meeting. The Board of Education has met the three (3) conditions imposed by the Planning Commission at that time. In particular, Mr. Davis noted that the Board of Education has obtained a variance from the Queen Anne's County Board of Appeals for the height of the structure. Moreover, as

a result of the study by The Traffic Group, the Board of Education has added additional signage and cross hatching on roads and sidewalks for pedestrians. Finally, landscaping plans have been altered, as requested by Mr. Hawes, with the help of Wes Johnson of the Department of Recreation and Parks.

Mr. Davis explained that the site plan requires amendment as McCrone neglected to include the area of the second floor of the high school or the gross floor area reflected on the site plan. Consequently, the 3.5 acres of floor area shown on the site plan, should be 4.47 acres when the second floor is added. He noted that the additional floor area has no impact upon impervious surface or parking as the parking was properly calculated on the original site plan and the additional floor area is wholly within the first floor footprint of the high school structure.

Mr. Davis also noted that the air conditioning system at the high school is designed to require the storage of ice in concrete containers in the mechanical court proposed for the high school. However, McCrone has been informed by the mechanical contractors that the storage area requires expansion. Mr. Davis noted that the mechanical court has been expanded on the amended site plan to accommodate the area needed for the storage of ice. Finally, Mr. Davis noted that the gas propane tank is now shown as in a larger fenced area than originally proposed to meet safety requirements. Finally, Mr. Davis noted that two parking areas near the stadium and field house have been combined into one parking area. The combined parking lot contains the same number of parking spaces. The revision is intended to cut costs by eliminating additional drainage improvements.

Upon review and final consideration, the following motion was made by Ms. Van Orden, seconded by Mr. Hawes, and passed by voice vote:

RESOLVED that the request of the Queen Anne's County Board of Education for amendments to the approved site plan (MASP # 04-96-06) for the Kent Island High School regarding the floor area of the second floor of the high school, an expanded mechanical court and propane tank storage area, and the consolidation of two parking areas be and are hereby approved.

The Planning Commission then considered the request of Winchester Creek Limited Partnership for a sketch plan approval and Critical Area growth allocation technical comments (SSP # 05-96-05). Dr. Foor recused himself as he has a pecuniary interest as a limited partner in the applicant. Mr. Hawes assumed the chair in Dr. Foor's absence. Tom Davis, McCrone, Inc., Centreville appeared on behalf of the applicant together with Mareen Waterman, general partner of the applicant. Mr. Davis explained that the applicant proposes a 15 lot subdivision with three (3) separate open space areas. The property was recently rezoned by the County Commission to the Estate (E) District. It is almost entirely within the Critical Area and is designated as RCA. The applicant intends to seek growth allocation re-designating approximately 28 acres of the site to the LDA. The property has a total area of 56.6 acres.

Mr. Davis explained that the 28 acres of growth allocation represents the area of proposed lots and public roads.

Mr. Hawes requested that Mr. Kaii-Ziegler and Mr. McDonnell explain the background for the technical comments sought by the applicant. Mr. Kaii-Ziegler explained that Section 7011(A) of the Critical Area Ordinance requires that growth allocation requests begin with a concept plan review and approval by the Planning Commission. Section 7011(A) requires that the Planning Commission find that the concept plan is consistent with the Critical Area Program. Consequently, it was his opinion that the concept plan approval required of the Critical Area Ordinance for growth allocation purposes needs to be based upon findings beyond those typically required for concept plan approval (e.g., that the proposed use for the site meets density and bulk standards, etc.) He noted that the applicant is required to include the Planning Commission's technical comments in its growth allocations application to the County Commissioners.

Mr. McDonnell outlined the Department of Planning and Zoning's reaction to the subdivision concept and the applicant's request for 28 acres of growth allocation. First of all, Mr. McDonnell noted that the Critical Area Commission as well as the Critical Area criteria "strongly encourages" a 300' wide shore buffer for all new LDAs. He noted that the applicant's concept plan does not provide for a 300' shore buffer. While the buffer extends beyond 100' in some areas, Mr. McDonnell expressed the view that he could not determine where the buffer was expanded as the applicant had chosen to remove the 100' buffer delineation line on this iteration of the concept plan. As a result, Mr. McDonnell was not able to evaluate the area of the property where the buffer was proposed for expansion. Mr. McDonnell expressed the Department of Planning and Zoning's view that a reduction in the 300' shore buffer - which is encouraged for new LDAs - could not be justified on the basis of the information supplied by the applicant. Mr. McDonnell also expressed to the Department of Planning and Zoning's view that a subdivision design that did not extend lot lines to water's edge would be preferable. It is his view that a buffer in single ownership, perhaps owned by a homeowner's association, would ease enforcement issues as the buffer is not supposed to be altered in any fashion. He was concerned that the Planning and Zoning may have enforcement difficulties if the buffer is owned by as many as 15 different lot owners. He noted that the applicant's object to Planning and Zoning's proposal on the basis that "waterview" lots are much less desirable than "waterfront" lots. According to the applicant, if the lots are not "waterfront" the project is not economically feasible. Mr. McDonnell expressed the Department of Planning and Zoning's opinion that it had not received any data to support the applicant's position that the lots would be much less valuable and much more difficult to market if they did not extend to the water's edge. [Mr. McDonnell indicated that the Department of Planning and Zoning would cooperate with the applicant to seek a reduction in the 70' wide right-of-way presently proposed. Once again, he had explained that the Department of Public Works insists that the road width be 70' on the basis of standards in the County Roads Ordinance. He felt that a 50' right-of-way for this subdivision would be more

appropriate as it would reduce net buildable area, impervious surfaces, and very likely reduce the required acreage for growth allocation.

Mr. McDonnell had the impression that the applicant intended to propose a wildlife corridor to link forested areas on the property with forested areas to the east. He noted that the proposed road would sever the wildlife corridor. He was not impressed with the applicant's proposal to maintain the wildlife corridor, notwithstanding the fact that it is crossed by a road.

Mr. McDonnell noted that the Maryland Historical Trust reviewed a plan for the subdivision project in 1993 and identified a "shell midden." The "shell midden" is located within the 100' Critical Area Buffer. He noted that the current subdivision design would place the "shell midden" wholly within an individual lot. He was concerned that the Historical Trust had not been consulted on means by which the "shell midden" may be protected, particularly as it will be within a lot. Mr. McDonnell reviewed several letters from Theresa Corless, a staff member for the Critical Area Commission. Ms. Corless commented on the difficulty she had in understanding the plat. She also inquired whether there had been any determination as to the presence of Delmarva Fox Squirrels on the property, as Delmarva Fox Squirrels had been reported on adjacent properties. Ms. Corless strongly recommended that the property utilize a 300' shore buffer. She reminded the applicant in her correspondence that a 300' shore buffer is not included within growth allocation and, consequently, would significantly reduce the acreage required for growth allocation on this project. Finally, she, like Mr. McDonnell, was not able to determine where the 100' buffer was proposed for expansion by the applicant as it had decided to remove the 100' delineation line.

Mr. Waterman argued that the concept design for the subdivision meets all requirements of the Zoning Ordinance. He also urged the Planning Commission to find that the subdivision meets the policies of the Critical Area Program as it involves a clustering of lots immediately adjacent to or within a designated growth area served by public sewer. Mr. Waterman argued that lots that do not run to the water simply do not produce the market prices and interest that will make this project feasible.

Mr. Pusey inquired of Mr. Waterman whether Delmarva Fox Squirrels had in fact been located on the property. Mr. Waterman did indicate that a Delmarva Fox Squirrel habitat had been identified on Mrs. Nesbitt's adjacent property. Within the last few days, according to Mr. Waterman, the Hissey Farm property was identified as a potential habitat for Delmarva Fox Squirrels. He acknowledged that additional identification and proposals by the environmental consultants will be necessary.

Mrs. Van Orden inquired whether variances from the Floodplain Management Ordinance will be necessary given the limitation of 600 cubic yards of fill on the site. Mr. Waterman responded by indicating that he did not know whether a Flood Plain Management Ordinance variance would be necessary until final engineering drawings for the proposed

roadways have been completed. He did note, though, that the roads mostly require excavation and not fill. Ms. Seward inquired whether the applicant would consider a 200' buffer. Mr. Waterman indicated that would make development of the property difficult, if not economically impossible. Mr. Kaii-Ziegler also reminded Ms. Seward that the 200' shore buffer would not significantly reduce the growth allocation requested as it is only a 300' shore buffer that can be deducted from net buildable area in the growth allocation request.

Mr. Hawes then recognized Jack Broadbent, 618 Chester River Beach Drive, Mr. Broadbent lives directly across Winchester Creek from the Hissey Farm property. Mr. Broadbent expressed his opposition to the proposed development. He felt that the subdivision of Hissey Farm would produce environmental degradation to Winchester Creek and he much preferred that Hissey Farm be left the way it is. He expressed the opinion that Mr. Waterman was a land speculator who was "railroading" the Planning Commission. He also protested Dr. Foor's involvement as chairman of the Planning Commission as he has a financial interest in Winchester Creek Limited Partnership. He described the proposed subdivision as a "clandestine cluster housing project."

Mr. Hawes recognized Ann Tamlyn of Centreville. Ms. Tamlyn also expressed her opposition to the proposed subdivision. She expressed the opinion that two (2) large lots on the 56 acres could be among the most valuable lots in Queen Anne's County. She questioned why the applicant would propose to put 15 lots on a shallow creek in or near a floodplain. But for the natural beauty of the property, she did not believe that the property has much value for residential development. She thought that developing two (2) estate type lots on the property would be more convenient to the applicant and would certainly earn the applicant more gratitude from the nearby citizens.

Mr. Waterman responded to Mr. Broadbent's accusations regarding Dr. Foor. He indicated that Dr. Foor is a minor investor in Winchester Creek Limited Partnership. His investment was made prior to being named to the Planning Commission and his investment was disclosed on his ethics disclosure form. Dr. Foor has always recused himself from consideration of development proposals for the property. Mr. Waterman reminded the Planning Commission and Mr. Broadbent that the Planning Commission has recommended against rezoning of the property.

Mr. Drummond then announced that he was obliged to appear in the Circuit Court for Queen Anne's County. The Planning Commission then tabled consideration of the Hissey Farm project until counsel could return. However, Mr. Hawes did inquire of Gary Moore whether the Department of Public Works would accept the 50' right-of-way for this proposed subdivision. Mr. Moore responded by indicating that DPW would consider a 50' right-of-way adequate to service a 15 lot development and would likely waive the 70' right-of-way requirement. Mr. Pusey asked whether design of the roadways could be altered to provide for circles or curves in what is a very straight and angular road design. Mr. Davis expressed concern that changing the placements of the roads would create an increase in the growth

allocation required. Mr. McDonnell suggested removing some of the lot lines running to the water and add the shore buffer area to require open space. In that fashion, Mr. McDonnell believes that redesign of the roads may be possible.

Dr. Foor then returned to the Planning Commission. There followed general discussion among members of the Planning Commission and staff regarding the regulation of landfills. Additionally, the Planning Commission and staff discussed the changes to the development review cycle. Mr. Kaii-Ziegler indicated that he expected to have a packet of information for the Planning Commission's consideration during the February 13, 1997.

Dr. Foor then recognized Barry Griffith, Community Planner for the Department of Planning and Zoning. Mr. Griffith indicated that he had not received any written comments regarding the Chester Growth Subarea plan following the public hearing on December 12, 1996. The public hearing on the Queenstown Growth Subarea plan was held on January 7, 1997. Mr. Griffith indicated approximately 60 people attended and 12 or 13 people offered comments.

Dr. Foor then recognized Mr. Kaii-Ziegler who outlined several proposed amendments to the Queen Anne's County Zoning Ordinance. First of all, Mr. Kaii-Ziegler presented an amendment which would expand the use of a sliding scale subdivision to the Countryside (CS) District by altering Section 4002(B)(3) and Section 5103(A) and (D). Mr. Hawes objected to the proposed amendments on the grounds that it was an additional way to easily subdivide farm lands and would promote sprawl in rural areas of the County. Mr. Kaii-Ziegler then outlined a second proposed amendment that is intended to provide a specific density standard for planned and clustered subdivision in the NC Districts by adding a footnote to Section 5105 expressly defining how density is to be calculated. Mr. Kaii-Ziegler explained that the proposed amendment is in response to the Circuit Court's recent decision as well as the Board of Appeal's decision to overturn the Hatfield subdivision given the perceived lack of density standards for cluster and planned subdivision in the NC District.

Upon review and further consideration, the following motion was made by Ms. Seward, seconded by Mrs. Van Orden and passed by voice vote with Mr. Hawes in opposition.

RESOLVED that the Queen Anne's County Planning Commission favorably recommends to the Queen Anne's County Commissioners the adoption of amendments to Sections 4002(B)(3) and Section(A) and (D) of the Zoning Ordinance that will permit sliding scale subdivisions in the Countryside (CS) District.

Upon review and further consideration, the following motion was made by Mr. Hawes, seconded by Mr. Pusey, and passed by voice vote:

RESOLVED that the Queen Anne's County Planning Commission favorably recommends to the Queen Anne's County Commissioners the adoption of amendments

to the Queen Anne's County Zoning Ordinance establishing specific density standards for cluster and planned development in the NC District by way of the addition of a footnote to Section 5105 to state as follows: These performance standards apply to all cluster subdivisions and planned developments in the NC-Districts. Density shall not exceed the site area divided by the "minimum lot area" for the applicable NC-District set forth in Section 5102.

Mr. Drummond then returned to the meeting. Dr. Foor left the meeting so the Planning Commission could take up the Hissey Farm application. Mr. Hawes then moved that the Planning Commission meet in executive session to receive advice from Mr. Drummond on the legal standards to be applied to "technical comments" from the Planning Commission under Section 7011 of the Critical Area Ordinance. Ms. Seward seconded the motion which passed by voice vote. The Planning Commission met in executive session from 2:10 p.m. to 2:40 p.m.

Mr. Hawes then outlined the substance of the options available to the Planning Commission given the request presented by Winchester Creek Limited Partnership. First, the Planning Commission could deny concept plan approval and make an unfavorable recommendation on growth allocation in light of Planning and Zoning's concerns. The Planning Commission may grant concept plan approval with technical comments that suggest or require changes to the design of the proposed subdivision that may also have an impact on the acreage included in the applicant's growth allocation request. Finally, the Planning Commission could table the request with instructions to the applicant that it redesign the proposed development before it proceeds further with the growth allocation request.

Upon review and further discussion, the following motion was made by Mr. Seward, seconded by Mr. Pusey and passed by voice vote:

RESOLVED that the request of Winchester Creek Limited Partnership for concept plan approval (SSP 05-96-05) for a proposed 15 lot subdivision with three (3) separate open space parcels to be served by a public road on 56.6 acres of land owned by the applicant - known as Hissey Farm is conditionally approved subject to the following conditions: (1) the applicant shall improve the internal road design of the subdivision in accordance with suggestions from the Department Of Planning And Zoning, (2) reduce the width of the proposed road to 50', (3) provide a 100' shore buffer, but "expand" the buffer through the use of a 200' "conservation area" on the proposed lots where the depth of the lots permit reasonable development or provide a 150' shore buffer for any lots that do not have property lines to the mean high water line, (4) consult with the Department to find all means by which the acreage of growth allocation may be reduced, and

BE IT FURTHER RESOLVED that the Planning Commission shall review design changes to the proposed subdivision plat before the applicant submits its growth allocation petition to the County Commissioners.

There being no further business to come before the Planning Commission, the meeting was adjourned at 3:15 p.m.



Loring Hawes, Secretary

Attachment E - Memo to Planning Commission Members, from Mark McDonnell, AICP, Development Review Chief, February 13, 1997.



DEPARTMENT OF PLANNING AND ZONING
QUEEN ANNE'S COUNTY

107 N. LIBERTY STREET
CENTREVILLE, MARYLAND 21617

410-758-4088 Permits
410-758-3972 Fax
410-758-1255 Planning
410-758-2905 Fax

To: Planning Commission Members
From: Mark McDonnell, AICP, Development Review Chief
Date: February 13, 1997
RE: **HOMEPORT ON WINCHESTER CREEK**
QAC SSP #05-96-05-C

OWNER Winchester Creek Limited Partnership
109 Country Day Road
Chester, Maryland 21619

AGENT McCrone, Inc.
207 North Liberty Street
Suite 100
Centreville, Maryland 21617

GENERAL INFORMATION

Map/Parcels 58/11,497,616
Tract Size 56.6 acres
Location At the terminus of Hissey Road where it intersects with Winchester Creek service road (see attached photograph).
Zoning District E-Estate
Critical Area The tract is located almost entirely within the RCA designation of the Chesapeake Bay Critical Area (55.949 acres).

PROPOSAL AND REQUESTED ACTION

The applicant proposes 15 residential cluster lots with lot areas ranging from .921 acres to 2.585 acres. They are to be served access by the extension of a new road from Hissey Road that branches into three cul-de-sacs. Three open space parcels are shown as lot numbers 16, 17 and 18, measuring 21.538, 6.022 and 4.154 acres, respectively. All of the lots are designed with frontage on the water, with expanded shore buffers shown on each lot. A community pier is to be located on open space lot #17.

The applicant seeks sketch plan approval, and the issuance of official Planning Commission technical comments on the draft petition for Critical Area Growth Allocation to upgrade 26.553 acres of RCA (Resource Conservation Area) land to the LDA (Limited Development Area) Critical Area designation. Growth allocation is necessary to allow the desired density, which would otherwise remain at two (2) dwelling units.

APPLICATION STATUS

A design for this project was reviewed by the Planning Commission at its January 9, 1997 meeting. The sketch plan was conditionally approved, and the Planning Commission directed adjustments in design and a resubmittal to them before an official petition to the County Commissioners were made. Those specific changes the Planning Commission directed the applicant to achieve included the following:

1. Improve the road design in accordance with the staff report;
2. Reduce the road right-of-way width to 50 feet;
3. The lots include a 100-foot shore buffer with an expanded conservation easement to 200 feet where the depths of the lots permit, or show a 150-foot shore buffer if the lots are not riparian (ie., not waterfront).
4. Every effort be made to reduce the amount of required growth allocation.
5. The Planning Commission review changes on a new plat before submittal of the growth allocation petition to the County Commissioners.

DETAILED REPORT

Following is a composite of how the plan has been redesigned to address each of the above-listed conditions:

Improve Road Design

The previous staff report acknowledged the prior design of a 70-foot wide right-of-way, and the applicant's request to the Department of Public Works (DPW) to reduce the right-of-way width. Staff had noted that a reduction of the right-of-way width would reduce the amount of growth allocation needed for the project.

The plan has been modified to show a 50-foot wide right-of-way, and a roundabout at the intersection of the two streets within the subdivision.

The DPW notes that the 1992 Roads Ordinance does provide for an optional 50-foot wide right-of-way as currently shown, but it does not have a provision for the 50-foot diameter cul-de-sac or for the roundabout street intersection, also currently shown. The DPW asks that the applicant submit a written request explaining why current standards should not be used, and relate the reason(s) to zoning, critical area, accessibility, and safety concerns that were considered in determining the request.

DPW recommended sketch plan approval, but cautioned that significant roadway design, alignment and right-of-way issues may need to be modified depending upon the road ordinance that may be in effect at the time at which the submittal for a preliminary subdivision approval is requested (see attached memorandum from the DPW).

Reduce Road Right-of-Way Width

As noted above, the right-of-way width has been reduced along the entire portion of the new road. The road right-of-way width satisfies the directive of the Planning Commission.

Buffer Modification-Expansion/Environmental Easement

The Planning Commission directive allowed for two shore buffer design options:

1. Show 100-foot shore buffers, with expanded buffers to 200 feet for those lots whose depths would permit, and
2. for non-riparian lots (non-waterfront), show a 150-foot shore buffer.

As all of the proposed lots front on the water, each must include the 100-foot shore buffer, and an additional 100-foot environmental easement where the lot depths would permit.

The full 100-foot environmental easement, which can essentially result with a 200-foot shore buffer, was applied to the following lots:

3, 8, 11, 12, 13, 14 and 15

An expanded shore buffer is achieved from the placement of an environmental easement on the balance of the lots (1, 2, 4, 5, 6, 7, 9, 10). The configuration of these lots would not permit the full 100-foot environmental easement, and they exhibit a resulting shore buffer ranging from the 100-foot minimum to approaching 200 feet (ie., lot 2).

Every Effort to Reduce Growth Allocation

Staff believes the applicant has diligently responded to the directive that the amount of growth allocation necessary be reduced. The current plan is the third design submitted for the preparation of the petition for growth allocation:

1st plan	(11-07-96)	32.339 acres of growth allocation needed
2nd plan	(12-13-96)	27.919 acres of growth allocation needed
3rd plan	(1-21-97)	26.553 acres of growth allocation needed

From the initial application and design, the applicant has reduced the amount of requested growth allocation by 5.786 acres.

Return to Planning Commission with Modified Plat

The applicant submitted the current plan at the January 21, 1997 25-day cutoff to allow the Planning Commission to consider the changes made in response to the motion made on January 9, 1997. The applicant has satisfied this condition.

OTHER REMARKS

1. It is believed the purpose of designing the roundabout was to slow traffic to protect a wildlife corridor where gap in the existing forested areas was most narrow. This location is at the beginning of the new road, near the intersection of Hissey Road and the Winchester Creek service road. It may be more beneficial to locate the roundabout further southeast closer to the small gap in the forest to slow traffic in that area.
2. Nearly all of open space lot 17 is either covered by the 100-foot shore buffer, or a significant environmental easement. The exception is only the area reserved for the proposed community pier parking. This could be a significant environmental contribution, provided the easement truly functions to protect the area depicted.
3. Scott Smith, Eastern Regional Manager, MD DNR Heritage & Biodiversity Conservation Programs, recommends the open space lots be deed restricted so that the existing forest is not harvested or otherwise disturbed to maintain the critical Delmarva Fox Squirrel habitat in perpetuity (see attached).

4. Bill Harvey, MD DNR Waterfowl Project Manager, recommends that the construction of the community dock be timed to avoid the October-March period when waterfowl would likely use the area (see attached).
5. Christopher F. Drummond, Planning Commission Attorney, has expressed a desire to see the proposed covenants for the "environmental easement" areas. Staff agrees it would be beneficial to learn what types of activities and uses would be permitted, versus those intended to be prohibited.
6. Open space covenants for lot 16 and 18 would be beneficial for staff review. It is unknown why the environmental easement on lot 18 was not extended to the road right-of-way, and why the narrow band of open space on lot 18 is not encumbered by the easement.
7. The Critical Area Commission has commented that:
 - environmental easements do not replace any required expansion of the buffer. Wetlands and any associated buffer expansion should be addressed.
 - a knowledge of the requirements and restrictions of the conservation easement would be helpful in reviewing the project.
 - lot 18 is not buildable under RCA density restrictions, of which the applicant should be aware.(see attached correspondence from the Critical Area)
8. The Department of Parks and Recreation would discuss the donation of the open space parcel to the County for open space purposes, if the applicant is interested.
9. The Department of Environmental Health alerted the applicant that a groundwater appropriations permit is required from the Maryland Department of the Environment (MDE), and that the existing well serving the existing dwelling (which is to be removed) must be abandoned and sealed.

RECOMMENDATION: Staff recommends this current sketch plan be approved. The Planning Commission may wish to consider offering technical comments to the County Commissioners. Possible comments could include, without limitation, the following:

- relocate roundabout closer to the wildlife corridor to slow traffic where intended.
- offer the environmental easement for review with the official growth allocation petition.
- consider deed restricting the open space areas from forest harvesting to maintain the Delmarva Fox Squirrel habitat.
- require a plat note restricting pier construction from the October-March period when waterfowl would likely use the area.
- offer the open space covenants for review with the official growth allocation petition.
- pursue negotiations with the Department of Parks and Recreation for possible open space donation.

attachments

J:\data\plancomm\staff\97\homeport

Attachment F - Resolutions made by County Commissioners on April 14, 1998, documenting the length of time between applicants submission of concept (or sketch) plans and approval of Growth Allocation at the County Level.

RESOLUTION

98-11

WHEREAS, on March 10, 1997 Winchester Creek Limited Partnership ("Petitioner") did file with the County Commissioners of Queen Anne's County ("County Commissioners") a Petition requesting the 26.553 acres of land more or less located on the property known as the Hissy Farm (the "Property") be redesignated in accordance with Title 14 of the Code of Public Laws for Queen Anne's County, *Environmental Protection*, from Resource Conservation Area (RCA) to Limited Development Area (LDA) thereby granting Petitioner Growth Allocation for the Property;

WHEREAS, on February 13, 1997 the Planning Commission for Queen Anne's County (the "Planning Commission") approved a sketch plan depicting the development scheme for the Petitioner's property;

WHEREAS, on June 12, 1997 the Planning Commission did favorably recommend that the County Commissioners approve the Petitioner's request for growth allocation, finding both that said request was consistent with the Queen Anne's county Chesapeake Bay Critical Area Program and that said "applicant's property is adjacent to the Grasonville growth subarea, is served by public sewer and will permit a 15 cluster lot subdivision on the property which will be of substantial economic benefit to Queen Anne's County given the significant property tax and piggy back income tax expected to be generated by the subdivision of the Property";

WHEREAS, the Planning Commission's favorable recommendation of Growth Allocation was conditioned on (1) that there be no more than one residential structure outside of the property lines of the proposed 15 cluster lots, (2) that any residential structure on the open space lots shall be subject to the same restrictive covenants that affect all the cluster lots in the proposed subdivision, (3) that there shall be no nursery uses on the open space lots (4) that the growth allocation be specifically expressly linked to the 15 cluster lot subdivision currently proposed by the applicant, and (5) that the current E District designation of the property is upheld by the Circuit Court for Queen Anne's County and any subsequent appellate court;

WHEREAS, on August 21, 1997 the County Commissioners granted "conceptual approval" to the Petition and forwarded the same to the Chesapeake Bay Critical Area Commission ("Critical Area Commission") for its approval;

WHEREAS, on October 1, 1997 the Critical Area Commission approved the Petition for growth allocation as a Critical Area "program refinement" with the following conditions:

1. The applicant will adopt easement restrictions which permanently protect the easement area in the same way as the 100' Buffer;
2. The applicant will adopt easement restrictions for the site which will protect and

enhance the existing habitat for the federally endangered Delmarva Fox Squirrel which are approved by the Department of Natural Resources' Heritage and Biodiversity Conservation Program;

3. The applicant will prohibit the construction of the proposed community pier and any other water dependent facility on this site between October and March of any year to protect waterfowl habitat;
4. The applicant agrees to enhance unforested areas of the 100' Buffer and environmental easement with planted native forest species or to allow the areas to naturally regenerate;

WHEREAS, on February 4, 1998 the Critical Area Commission reapproved, with the same conditions as the October 7, 1997 approval, the Petition for Growth Allocation as a Critical Area "program refinement";

WHEREAS, the Petition for Growth Allocation is consistent with the 1993 Comprehensive Plan Update for Queen Anne's County ("Comprehensive Plan") as well as the Chesapeake Bay Critical Area Program for Queen Anne's County, 1996 update ("Critical Area Program");

WHEREAS, the proposed Development Project implements specific development objectives of the Comprehensive Plan in as much as the County encourages "residential waterfront development which is done in an environmentally sensitive manner while recognizing the limitations placed on such development by the Chesapeake Bay Critical Area Law and Criteria" Comprehensive Plan pg. 90.

WHEREAS, the Property is currently designated S-1 in the County Master Sewer and Water Plan, sewer capacity has been purchased by the petitioner and public facilities will be provided to the Property;

WHEREAS, an evaluation of the proposed cluster subdivision sketch plan, the Staff Report and exhibits submitted with the Petition, clearly shows that minimum mandatory design standards have been met and in some cases exceeded such as the establishment of shore buffers of greater depth than that required by the County Code;

WHEREAS, the design of the proposed cluster subdivision enhances the water quality and resource and habitat value of the area by increasing the required shore buffer, and the fact that the Petitioner has incorporated comments and recommendations from both the County Planning Staff, as well as the Maryland Fish, Heritage and Wildlife Administration into the design of the proposed cluster subdivision; and,

WHEREAS, the Property is located in a designated growth area, i.e. the Grasonville

Community Planning area.

NOW, BE IT RESOLVED, that in consideration of the preceding findings which are not merely prefatory, but are included as part of this resolution, the County Commissioners favorably approve the Petition for 26.553 acres of growth allocation redesignating the subject property from RCA to LDA be approved, specifically with the following conditions:


1. That there be no more than one residential structure outside of the property lines of the proposed 15 cluster lots.
2. That any residential structure on the open space lots shall be subject to the same restrictive covenants that affect all the cluster lots in the proposed subdivision.
3. That there shall be no nursery uses on the open space lots.
4. That the growth allocation be specifically and expressly utilized for a 15 cluster lot subdivision currently proposed by the Petitioner and that said subdivision be in substantial compliance with the sketch plan approved by the Planning Commission on February 13, 1997.
5. That the current Estate (E) District designation of the property is upheld by the Circuit Court for Queen Anne's County and any subsequent appellate court, or that the property be rezoned E during the Grasonville Community Planning effort;
6. The applicant will adopt easement restrictions which permanently protect the easement area in the same way as the 100' Buffer;
7. The applicant will adopt easement restrictions for the site which will protect and enhance the existing habitat for the federally endangered Delmarva Fox Squirrel which are approved by the Department of Natural Resources' Heritage and Biodiversity Conservation Program;
8. The applicant will prohibit the construction of the proposed community pier and any other water dependent facility on this site between October and March of any year to protect waterfowl habitat; and,
9. The applicant agrees to enhance unforested areas of the 100' Buffer and environmental easement with planted native forest species or to allow the areas to naturally regenerate.

COUNTY COMMISSIONERS OF
QUEEN ANNE'S COUNTY


Ted Moeller

Date: _____

4/14/98


Michael F. Zimmer Jr.


George O'Donnell

Attachment G - Correspondence from Mr. Waterman dated February 10, 2003.

**COLDWELL BANKER
WATERMAN REALTY CO.**

FAX TRANSMITTAL FORM

DATE: 2/10/03 TIME: 1 01 ~~AM~~/PM

TO: Dr Cherry Keller

COMPANY: USFWS

FAX NUMBER: 410-269-0832 OFFICE NUMBER: 573-4532

SUBJECT: Economic info re Home Port
as requested by duties

PAGES TO FOLLOW COVER SHEET 2

FROM:

M D W

109 COUNTRY DAY ROAD, SUITE 1
WATERMAN BUSINESS PARK
CHESTER, MD
21619
(410) 643-5005

FAX NUMBER: (410) 643-5213

Financial Justification for Homeport

Relocation of the road away from the woods would have resulted in the County not granting Growth Allocation and therefore no development of the property would have been possible. The Critical Area Commission requires that any parcel developed in a Resource Conservation Area under the Critical Area Law must be given Growth Allocation if it is less than 20 acres in size. Growth Allocation is a very valuable commodity within each County, which the County has discretion to grant or not, based on criteria that each County decides upon. Each County was allocated a minimal amount of Growth Allocation that it was allowed to use by the State...once used, there is no more. Queen Anne's County was originally granted approximately 1500 acres of Growth Allocation. Queen Anne's County requires that a project seeking Growth Allocation show a financial benefit to the County – i.e. that economic benefits from the project are enough to justify granting Growth Allocation instead of saving it for a future, more financially beneficial project.

Had the road bed been relocated as currently sought by Defenders and Mr. Gerber, the result would have been a lot under the 20 acre threshold – Requiring the County to use 18 or 19 acres more growth allocation for this project, than as actually proposed and approved. The developer was told that was unacceptable to the County and growth allocation would not have been granted for the project. Both the Planning Commission and County Commissioners made this clear during the design and approval process.

In developing many concepts for development of the property, the developer reduced the potential yield from the 27 allowed under zoning, to 22, and later to 16 buildable lots. Reduction of the number of lots further, in particular the loss of lot 16 would have resulted in an economic loss to the project estimated at \$250,000 since it contained just over 20 acres, could accommodate horses and hunting. Lot 16 represented a major portion of the expected profits, and loss of it would have made the entire development economically unfeasible.

Between January 1, 1998 and December 31, 1998 only two waterfront lots were sold in Grasonville - \$141,000 and \$300,000. The latter being a 2 acre lot in a very exclusive area with views across 5 to 10 miles of the Miles River, and good water depth. The former being a lot in a Country Club community containing an 18 hole golf course, pool, public water, tennis courts, and more. These lots were permitted to have a private pier and not limited as to clearing vegetation. During 1998 the average price of waterfront lots under 5 acres sold in Queen Anne's County was \$192,250. Since Homeport lots were significantly less desirable due to the environmental restrictions that would effectively block each lot's view of the water forever, together with the prohibition against private piers, the developer hoped Homeport lots would sell for \$150,000.

If the 15 lots sold at the hoped for \$150,000, gross income would have been \$2,200,000 and lot 16 would have added \$250,000, or a total sell out of \$2,450,000. Sales expense of 8%, plus settlement costs (est 1%), would have produced a net sales of \$2,229,500.

From that, by January 1, 1999, the developer had paid over \$500,000 for the land, \$178,086 in legal and consultant fees, had incurred \$511,316 carrying cost. Estimated future expenses were over \$578,597 for infrastructure for roads sewer, storm water, entrance, parking lot, bathhouse and pier. Total costs incurred and estimated to finish the project were \$1,767,999 as of January 1,1999. This amount does not include expense estimates for carry cost during the construction and sell out period and any estimate for ongoing and future legal costs, due to numerous appeals and lawsuits by Mr. Gerber. Not knowing when lots might be able to be sold, or how long legal disputes would go on, it was impossible to estimate these numbers. In fact, these expenses from January 1, 1999 through 2001 totaled \$211,000. Nor does this estimate include the ongoing expenses for taxes, monthly sewer charges, mowing, and maintenance of each lot and the community areas during the construction and sell out periods.

Attachment H - Queen Anne's County Code, Title 18. Land Use and Development.
Section 18-1-040.

LAND USE AND DEVELOPMENT

QUEEN ANNE'S COUNTY CODE

Title 18. LAND USE AND DEVELOPMENT

Subtitle 1.	Zoning and Subdivision Regulations
Part I.	Definitions and Word Usage
18-1- 001	Definitions
18-1- 002	Rules of interpretation
18-1- 003	Abbreviations
18-1- 004	Reserved
18-1- 005	Reserved
Part II.	Purpose and Scope
18-1- 006	Purpose of subtitle
18-1- 007	Relation to other laws
18-1- 008	Application of subtitle
18-1- 009	Effective date and disposition of pending matters
18-1- 010	Reserved
18-1- 011	Reserved
Part III.	Establishment of Zoning Districts
Subpart 1.	Districts
18-1- 012	Establishment of zoning districts
18-1- 013	Zoning districts
18-1- 014	Reserved
18-1- 015	Reserved
Subpart 2.	Zoning Maps
18-1- 016	Map of zoning district
18-1- 017	Interpretation of district boundaries
18-1- 018	Reserved
18-1- 019	Reserved
Subpart 3.	Characteristics of Districts
18-1- 020	Purpose of zoning district
18-1- 021	Reserved
18-1- 022	Reserved
Part IV.	Use Regulations
18-1- 023	Purposes
18-1- 024	Uses – Permitted and not permitted
18-1- 025	Table of permitted uses
18-1- 026	Permitted uses in open space
18-1- 027	Detailed use categories
18-1- 028	Agricultural uses
18-1- 029	Residential uses
18-1- 030	Institutional uses
18-1- 031	Commercial uses
18-1- 032	Industrial uses
18-1- 033	Temporary uses
18-1- 034	Reserved
18-1- 035	Reserved
Part V.	Zoning District Performance Standards
Subpart 1.	General Requirements
18-1- 036	General requirements
18-1- 037	Reserved
18-1- 038	Reserved

Subpart 2.	Residential Standards
18-1- 039	Single-family large-lot residential and large-lot agricultural performance standards
18-1- 040	Bulk standards for large-lot agricultural, neighborhood conservation and large-lot residential districts
18-1- 041	Sliding-scale subdivision standards
18-1- 042	Cluster, planned and manufactured home community performance standards
18-1- 043	Table of cluster, planned and manufactured home community performance standards
18-1- 044	Bulk, standards for cluster, planned and manufactured home community uses
18-1- 045	Reserved
18-1- 046	Reserved
Subpart 3.	Nonresidential Standards
18-1- 047	Nonresidential performance standards
18-1- 048	Nonresidential bulk requirement setbacks
18-1- 049	Urban Commercial District design standards
18-1- 050	Reserved
Subpart 4.	Site Capacity
18-1- 051	Purpose of site capacity calculations
18-1- 052	Base site area for all land uses
18-1- 053	Resources protection land for all land uses
18-1- 054	Determination of residential site capacity – Maximum number of dwelling units and area of allowable disturbance
18-1- 055	Determination of nonresidential site capacity – Maximum amount of floor area, impervious area and minimum landscape surface area
18-1- 056	Reserved
18-1- 057	Reserved
Subpart 5.	Accessory Uses
18-1- 058	Definitions
18-1- 059	Scope of subpart
18-1- 060	Exempt accessory structures
18-1- 061	Piers – Generally
18-1- 062	Private piers on residential lots
18-1- 063	Community piers
18-1- 064	Accessory dock facilities
18-1- 065	Residential accessory structures
18-1- 066	Accessory caretaker dwellings
18-1- 067	Institutional uses and structures – Sale of goods
18-1- 068	Horses and private stables
18-1- 069	Guest residences and guest apartments
18-1- 070	Reserved
18-1- 071	Reserved
Subpart 6.	Detailed Uses
18-1- 072	Detailed use regulations
18-1- 073	Reserved
18-1- 074	Reserved
Part VI.	Site Performance Standards
Subpart 1.	General Requirements
18-1- 075	Application of part
18-1- 076	Reserved
18-1- 077	Reserved
Subpart 2.	Resource Protection Standards
18-1- 078	Application of subpart
18-1- 079	Floodplains
18-1- 080	Steep slopes
18-1- 081	Streams and stream buffers

(2) used as a transferor parcel for transfer of development rights.

(c) Minimum lot size and building pads.

Each single-family large-lot shall include a building pad, the maximum size of which is set forth in the table below. The cumulative area of all building pads in a subdivision may not exceed the maximum net buildable area as determined by site capacity calculations.

DISTRICT	MINIMUM LOT SIZE	MAXIMUM PAD SIZE
Countryside (CS)	20 acres	3 acres
Estate (E)	2 acres	25,000 sq. ft.
Suburban Estate (SE)	1 acre	15,000 sq. ft.
Suburban Residential (SR)	30,000 sq. ft.	10,000 sq. ft.
Village Center		
without public sewer		
with public sewer	20,000 sq. ft.	10,000 sq. ft.
	15,000 sq. ft.	7,500 sq. ft.

(d) Performance standards for purposes of determining single-family large-lot residential densities.

The following table specifies single-family large-lot performance standards used in ~ 18-1-052 through 18-1-054 of this subtitle for purposes of determining single-family large-lot residential density.

ZONING DISTRICT AND USE	MIN. OSR.	MAX. N.B.	GROSS DENSITY
Countryside (CS)	.85	.15	.05
Estate (E)	.70	.30	.45
Suburban Estate (SE)	.70	.30	.88
Suburban Residential (SR)	.60	.40	1.24
Village Center (VC) with public sewer with septic	0.00 0.00	3.20 .88	3.20 .88

Drafter's Note: This section is derived from the 1994 Queen Anne's County Zoning Ordinance and Subdivision Regulations, Art. V, 5100.

In subsection (d) of this section, the introductory language "[t]he following table specifies single-family large-lot performance standards used in ~ 18-1-052 through 18-1-054 of this subtitle for purposes of determining single-family large-lot residential density" is new language added to explain the context of the table. The language was taken from the catchline of former 5100D.

The only other changes are stylistic.

Defined terms: ~ See 2-101 and 18-1-001

18-1-040. Bulk standards for large-lot agricultural, neighborhood conservation, and large-lot residential districts.

The following table specifies the bulk standards for large-lot agricultural, neighborhood conservation, and large-lot residential districts.

TABLE OF LARGE-LOT BULK STANDARDS

District	Min. Lot	Min. Frontage Ft.	Lot Width Ft.	Building Restriction Line			
				Front Ft.	Side Ft. Min/Total	Rear Ft.	Height Ft.
AG	20 ac.	35	500	50	50/100	50	40
NEIGHBORHOOD CONSERVATION DISTRICT ¹							
NC-1	1 ac.	35	150	35	20	50	40
NC-2	2 ac.	35	150	35	20	50	40
NC-5	5 ac.	35	250	35	20	50	40
NC-8	8,000 sq. ft.	35	60	25	8/18	35	40
NC-15	15,000 sq. ft.	35	70	35	8/18	50	40
NC-20	20,000 sq. ft.	35	100	35	15/35	50	40
OTHER RESIDENTIAL DISTRICTS							
CS	20 ac.	35	500	50	50/100	50	40
E	2 ac.	35	200	50	25/55	100	35
SE	1 ac.	35	140	50	20/45	75	35
SR	30,000 sq. ft.	35	120	40	15/35	50	35
VC w/sewer	10,000 sq. ft.	35	60	35	8	40	40
VC w/o sewer	20,000 sq. ft.	35	60	35	8	40	40

¹ Neighborhood conservation districts with a "T" designation will have all the same regulations as those without the "T" designation, except that single-wide manufactured homes are allowed.

Drafter's Note: This section is derived from the 1994 Queen Anne's County Zoning Ordinance and Subdivision Regulations, Art. V, 5102.

The only changes are stylistic.

Defined terms: ~ See 2-101 and 18-1-001

18-1-041. Sliding-scale subdivision standards.

(a) Application.

Sliding-scale subdivisions are allowed:

- (1) in the agricultural and countryside districts only; and
- (2) on parcels not dedicated to open space uses or created as part of a cluster subdivision.

(b) Site capacity calculations not required.

Site capacity calculations are not required for sliding-scale subdivisions. Consequently, performance standards concerning building pads/net buildable area, District Open Space, and Resource Protection Open Space are not applicable.

(c) Sliding-scale density.

TABLE OF LARGE-LOT BULK STANDARDS

District	Min. Lot	Min. Frontage Ft.	Lot Width Ft.	Building Restriction Line			
				Front Ft.	Side Ft. Min/Total	Rear Ft.	Height Ft.
AG	20 ac.	35	500	50	50/100	50	40
NEIGHBORHOOD CONSERVATION DISTRICT ¹							
NC-1	1 ac.	35	150	35	20	50	40
NC-2	2 ac.	35	150	35	20	50	40
NC-5	5 ac.	35	250	35	20	50	40
NC-8	8,000 sq. ft.	35	60	25	8/18	35	40
NC-15	15,000 sq. ft.	35	70	35	8/18	50	40
NC-20	20,000 sq. ft.	35	100	35	15/35	50	40
OTHER RESIDENTIAL DISTRICTS							
CS	20 ac.	35	500	50	50/100	50	40
E	2 ac.	35	200	50	25/55	100	35
SE	1 ac.	35	140	50	20/45	75	35
SR	30,000 sq. ft.	35	120	40	15/35	50	35
VC w/sewer	10,000 sq. ft.	35	60	35	8	40	40
VC w/o sewer	20,000 sq. ft.	35	60	35	8	40	40

¹ Neighborhood conservation districts with a "T" designation will have all the same regulations as those without the "T" designation, except that single-wide manufactured homes are allowed.

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(c) Sliding-scale density.

Attachment I - Queen Anne's County Planning Commission Minutes - February 13, 1997.

Note: Only the relevant pages are provided (pages 1 and 7-12) as the remaining pages were discussions of other projects. However, a complete set of the minutes is available for viewing at

QUEEN ANNE'S COUNTY PLANNING COMMISSION MINUTES FEBRUARY 13, 1997

The Queen Anne's County Planning Commission met on Thursday, February 13, 1997 at 8:45 a.m. The following members were present: Dr. James Foor, Loring Hawes, Anne Seward, Roger Weese and Karen Oertel

Also present were Steven Kaii-Ziegler, Planning Director, Mark McDonnell, Development Review Chief; J. Steven Cohoon, Planner I; Barry Griffith, Community Planner; Faith Elliott-Rossing, Planner I; and Christopher F. Drummond, Esq.

The Planning Commission unanimously approved the minutes from the January 9, 1997 meeting.

Dr. Foor then alerted the members of the Planning Commission to a resolution adopted on Tuesday, February 11, 1997, by the Queen Anne's County Commissioners requiring the use of Robert's Rules of Order by all County boards, agencies, and commissions. Dr. Foor read the text of the resolution. Dr. Foor inquired of Mr. Drummond whether the Planning Commission was obliged to adhere to the County Commissioners' resolution and to strictly follow the procedural requirements of Robert's Rules of Order. Mr. Hawes questioned the County Commissioners' authority to require use of Robert's Rules of Order inasmuch as Article 66B of the Annotated Code of Maryland directs and authorizes Planning Commissions to adopt procedural rules for the conduct of their business. Moreover, Mr. Hawes expressed his concern that strict adherence to Robert's Rules of Order could generate procedural defects in the Planning Commission's deliberations that might give applicants or opponents of development applications easy grounds to appeal Planning Commission's decisions. Finally, it was his view that any change in the procedures of the Planning Commission should be accomplished by proper amendments to the rules adopted by the Planning Commission in May, 1988. Mr. Weese also expressed some concern regarding the resolution adopted by the County Commissioners and wondered on what basis the Planning Commission should change long-established procedures. Dr. Foor then specifically inquired of Mr. Drummond's opinion on the matter. Mr. Drummond indicated that he had received a copy of the resolution on Wednesday, February 12, 1997 and had not yet had time to research the issue of the County Commissioner's authority to direct the Planning Commission on the conduct of its affairs. Moreover, Mr. Drummond had not had an opportunity to carefully review Robert's Rules of Order to assure himself that the Planning Commission's business could be conducted in accordance with those procedural requirements. It was Mr. Drummond's general impression, however, that Article 66B of the Annotated Code of Maryland does give the Planning Commission authority to adopt its own rules for the transaction of its business. Whether the County Commissioners could supercede that statutory authority was an issue that Mr. Drummond had not yet had an opportunity to research. He suggested that the Planning Commission do its best to respect the County Commissioner's directive and that the Planning Commission conduct its meeting as best it could in compliance with Robert's Rules of Order.

Mark McDonnell, on behalf of the Department of Planning & Zoning, recommended final site plan approval. Mr. McDonnell noted that the site plan meets all requirements of the Zoning Ordinance. He noted that the applicant has agreed to plant additional trees along properties with same zoning classification, though that planting is not required by the Zoning Ordinance. He did note that the applicant notes a circular loop on the plat in the boat storage area to permit the maneuvering of fire apparatus in the event of a fire. He reminded the applicant that the loop should remain clear of stored boats. Otherwise, he recommended final site plan approval.

Upon review and further consideration, the following motion was made by Mrs. Seward, seconded by Mr. Weese, and passed by voice vote:

RESOLVED that the request of A&M Marine Services, Inc. and Aldan Miller for final site plan approval (MASP #05-96-028) to permit the construction of a 5,025 sq. ft. commercial structure, and to expand existing boat storage and parking areas on 4.571 acres of land owned by the applicant on Station Lane in Grasonville be and is hereby approved.

The Planning Commission then considered the request of Winchester Creek Limited Partnership (by way of a motion made by Mr. Weese, and seconded by Mrs. Oertel) for sketch plan approval and technical comments on a growth allocation application regarding a proposed 15 lot cluster subdivision on 56.6 acres of land owned by the applicant on Hissy Road near Grasonville. Prior to the Planning Commission's consideration of the application, Dr. Foor recused himself given his minority limited partnership interest in the applicant. Mr. Hawes then acted as chairman of the meeting. Mr. Hawes recognized Mareen Waterman, General Partner of the applicant. Mr. Waterman briefly outlined the history of the "Homeport on Winchester Creek" project on Hissey Farm. He reminded the Planning Commission that it had conditionally approved the concept plan application at its January 9, 1997 meeting. At that time, the Planning Commission imposed a number of conditions, principally regarding the shore buffer, reduction in the width of the proposed public right-of-way, ~~and~~ a requirement that the applicant seek to reduce the acreage of the requested growth allocation as much as possible.

Mr. Waterman explained that the proposed subdivision of the Hissey Farm property now proposes a 100' shore buffer in addition to which there will be "conservation areas" on a number of the proposed lots that will have the same development and disturbance limitations as a standard shore buffer. According to Mr. Waterman, proposed Lots 3, 8, 11, 12, 13, 14, and 15 will have a full 200' shore buffer or "conservation area". Proposed Lots 1, 2, 4, 5, 6, 7, 8, and 10 have at least a 100' shore buffer, though the "conservation area" on the majority of the lots range upwards of 200'. Mr. Waterman noted that the width of the proposed public right-of-way has been reduced to 50' as recommended by the Planning Commission. He indicated that the Queen Anne's County Department of Public Works has agreed to the reduced width. Moreover, he noted that the applicant has added a traffic circle at the intersection in the proposed public road to slow traffic within the proposed subdivision. He noted that the Department of Public Works will not permit the installation of speed bumps. As a result, the traffic circle was thought to be the

only useful and available means by which speeds within the subdivision could be monitored. Finally, Mr. Waterman noted that the open space area within the proposed subdivision has been enlarged to the extent possible. As a result, the 27.919 acres of growth allocation requested by the applicant in the concept plan, presented in January, 1997, has been reduced to 26.553 acres.

Mr. Hawes then asked that Mr. McDonnell present the Department of Planning and Zoning response to the amended concept plan. According to Mr. McDonnell, the revised concept plan is an improvement over the concept plan considered by the Planning Commission at the January, 1997 meeting. He did note that the "conservation area" on a number of the lots should improve the effectiveness of the 100' shore buffer. He also noted that the applicant has reduced the request for growth allocation by a total of 5.786 acres from the original concept plan submitted in November, 1996. Mr. McDonnell, however, was not clear on the purpose of the traffic circle. It was his memory that the request to moderate the speed of traffic within the subdivision was intended to protect wildlife that may move through the wildlife corridor on the property bisected by the proposed road. He was not sure that a traffic circle in the central area of the property and away from the narrowest gap in the existing forested area will be particularly useful. There followed a lengthy discussion among Mr. McDonnell, Mr. Waterman and members of the Planning Commission regarding the usefulness of the traffic circle as a traffic control device and whether other control devices might have more beneficial impacts on speed and the protection of wildlife moving across the property. Mr. McDonnell noted that Mr. Drummond had expressed an interest in reviewing the restrictions that would be placed upon the "conservation areas" of the proposed cluster lots. Moreover, Mr. McDonnell reminded the Planning Commission that the open space areas of Lot 16, 17, and 18 could potentially be used for commercial forestry or nursery operations as those are permitted uses within open space. Finally, there followed a discussion among Mr. McDonnell, Mr. Waterman, and Mr. Drummond regarding the possibility of "farm employee dwellings" within the open space areas of Lots 16, 17, and 18. Mr. Drummond reminded the Planning Commission that "farm employee dwellings" are often permitted in open space and are not considered as residential "density." Mr. Waterman indicated that the larger open space areas could potentially be used for nursery operations. Moreover, Mr. Waterman would not expressly eliminate the possibility that the open space areas of Lot 16, 17, and 18 might be used for residential purposes at some point in the future provided that they qualified as "farm employee dwellings."

Mr. McDonnell then noted that the Maryland DNR Heritage and Biodiversity Conservation Program has recommended that the Lot 16, 17, and 18 be restricted to uses that would protect existing forest so as not to disturb and to maintain critical Delmarva Fox Squirrel habitat both on the property and in the immediate vicinity. Mr. Waterman responded by indicating that the applicant's proposal is to clear no more than 5% of existing forested areas on the property. Under current regulations designed to protect Delmarva Fox Squirrel habitats, Mr. Waterman noted that clearing of up to 75% of existing forested areas is permitted. As a result, the applicant is protecting the habitat for the benefit of the Delmarva Fox Squirrel at a rate far in excess of existing regulations.

There followed a discussion about the uses to which the shore buffer and the "conservation area" on the proposed cluster lots could be put. Mr. Drummond reminded the Planning Commission that the shore buffer must be maintained in a "natural vegetative state." According to Mr. Drummond, the Critical Area Commission has found "natural vegetation" to include lawn grasses. As a result, there is certainly a potential that the shore buffer and "conservation area" of each of the proposed cluster lots could be lawns running to the water. Mr. Waterman indicated that it was not the intent of the shore buffer or the "conservation area" to be used as lawns, but to be planted and maintained in appropriate marsh grasses.

Mr. Waterman then called upon Tom Davis, McCrone, Inc., Centreville to address whether the proposed growth allocation application and the proposed cluster subdivision would be consistent with the Critical Area Program. Mr. Davis noted that residential density in the LDA is permitted to be up to 3.99 units per acre. The applicant's 15 lots on a 56 acre tract is well below maximum LDA density. Moreover, the applicant proposes much less than 15% impervious surface on the property. Hissey Farm is adjacent to existing LDA. Moreover, the property is or adjacent to the Grasonville Growth Subarea. The applicant has complied "in so far as possible" with the recommended 300' shore buffer for new cluster development in the LDA. Finally, Mr. Davis noted that the proposed lots will be served by the public sanitary sewer facilities of Queen Anne's County.

Upon review and further consideration, the following motion was made by Ms. Seward, seconded by Mrs. Oertel, and passed by voice vote:

RESOLVED that the request of Winchester Creek Limited Partnership for sketch plan approval (MSAP 09-96-05) for 15 cluster lots with areas ranging from .921 acres to 2.585 acres on 56.6 acres of land owned by the applicant on Hissey Road near Grasonville be and is hereby approved, and

BE IT FURTHER RESOLVED that the Queen Anne's County Planning Commission finds that the application for 26.553 acres of growth allocation to the property to redesignate that area designated on the sketch plan from the RCA to LDA would be consistent with the goals and objectives of the Queen Anne's County Critical Area Program, and

BE IT FURTHER RESOLVED that the Queen Anne's County Planning Commission would favorably recommend to the Queen Anne's County Commissioners the application of 26.553 acres of growth allocation to the property redesignating that acreage from the RCA to LDA provided that the applicant and County Commissioners consider the following technical comments in connection with the grant or denial of growth allocation to the property:

- (1) That proposed Lots 16, 17, and 18 be restricted to prohibit all commercial forestry, nursery operations, and any residential structures.

(2) That stop signs be provided both within the property and at the intersection of Hissey Road and Winchester Creek Service Road for the purpose of slowing traffic within the property to protect wildlife using the wildlife corridor which traverses the property.

(3) That the "conservation areas" on the proposed cluster lots--which are intended to expand the 100' shore buffer required on the property--be structured and established so that they function in the same manner as the shore buffer and that the applicant require that "natural vegetation" planted or maintained both within the shore buffer and the "conservation areas" be other than lawn grasses.

(4) That the applicant be required to provide adequate restrictions and conditions in the open space areas of the proposed subdivision to limit or prevent forest harvesting to maintain any existing Delmarva Fox Squirrel habitat.

(5) Require a subdivision plat note restricting any construction of a community pier between November and March of each year when waterfowl would likely use adjacent areas of Winchester Creek.

Dr. Foor then recognized Barry Griffith, Community Planner for the Department of Planning & Zoning. Mr. Griffith requested the Planning Commission make its final review of the draft Chester Growth Subarea Plan and draft amendments to the Queen Anne's County Zoning Ordinance implementing the goals and objectives of the Chester Plan. Mr. Griffith reviewed the public comments offered to the Planning Commission during the public hearing on the draft Chester Plan and draft Zoning Ordinance amendments held on December 12, 1996. A compilation of the remarks, the Department's responses, and the available options as prepared by Mr. Griffith is attached to these minutes and incorporated herein. The Planning Commission, by consensus, agreed to leave the draft Plan unchanged in response to the remarks and requests made by Messrs. Stetcka, Bittorf, and Sigma.

Mr. Griffith also reviewed the proposed amendments to the Queen Anne's County Zoning Ordinance which were intended to implement the goals and objectives of the Chester Plan. In particular, Mr. Griffith reminded the Planning Commission that the draft Plan would create a "Master-Planned Development District" (CMPD) and a "Chester Town Center District" in the Chester Growth Subarea. The proposed zoning classifications for lands within the Chester Growth Subarea are as set forth on a Zoning Map dated December 12, 1996 displayed to the public at the public hearing. Those new zoning districts will also require amendments to the zoning maps for the area of Queen Anne's County. In that regard, Mr. Griffith noted that a late revision proposed to the zoning map for the Chester subarea is a proposal to zone property on Piney Creek Road owned by the Nash family to the proposed Town Center District. Mr. Hawes expressed his concern that "Chester Town Center District" might be confused with a zoning

classification in Chestertown. He suggested that the new district be referred to simply as the "Town Center District". Upon a review of Section 11002 of the draft amendments, the Planning Commission agreed that "marinas" should be a permitted use in the CMPD and that "associated and ancillary resort uses, e.g. conference facilities, aquatic facilities, health spas, athletic court, etc." should be added to the "hotels, country inns, and bed and breakfast" category of permitted CMPD uses. The Planning Commission also agreed that Section 12004(A) and (B) should be amended to include "parking, landscaping, and bufferyard requirements" to the list of matters that may be established by the Planning Commission on a case-by-case basis in the Town Center District.

The Planning Commission also reviewed modifications to the Queen Anne's County Critical Area Program required as a result of the provisions of the draft Chester Plan. In particular, Mr. Griffith noted that changes to the Critical Area Maps for the Chester growth area provide for the premapping of growth allocation. Because the Critical Area Program and maps adopted in 1996 did not provide for premapped growth allocation in the Chester area, the Program and Maps must be amended.

Upon review and further consideration, the following motion was made by Ms. Seward, seconded by Mrs. Oertel, and passed by voice vote:

RESOLVED that pursuant to Article 66B, Section 3.07 the Queen Anne's County Planning Commission favorably recommends that the Queen Anne's County Commissioners amend the 1993 Comprehensive Plan by adding thereto the Chester Community Plan dated February 13, 1997 with the single change that the "Chester Town Center District" proposed in the Chester Plan be changed to the "Town Center District".

Upon review and further consideration, the following motion was made by Mr. Hawes, seconded by Mrs. Seward, and passed by voice vote:

RESOLVED that the Queen Anne's County Planning Commission favorably recommends that the Queen Anne's County Commissioners amend the 1994 Queen Anne's County Zoning Ordinance by adding thereto Section 11000, et. seq. and 12000 et. seq. Set forth completely in the "revised amendments" dated February 7, 1997 attached to this Resolution and incorporated herein with the changes regarding the name of the "Town Center District", the commercial uses permitted in the CMPD District, and the site standards or requirements that may be established by the Planning Commission on a case-by-case basis explained more fully in these minutes.

Upon review and further consideration, the following motion was made by Ms. Seward, seconded by Mr. Weese, and passed by voice vote:

RESOLVED that the Queen Anne's County Planning Commission favorably recommends that the Queen Anne's County Commissioners amend the 1994 Queen

Anne's County Sectional Zoning Maps for the Chester growth subarea in a manner consistent with the zoning map dated December 12, 1996 which is attached to this Resolution and incorporated herein with the exception that the property owned by the Nash family on Piney Creek Road, shown on the map as in the Rural zone, be mapped as within the Town center District.

Upon review and further consideration, the following motion was made by Mr. Weese , seconded by Ms. Seward, and passed by voice vote:

RESOLVED that the Queen Anne's County Planning Commission favorably recommends that the Queen Anne's County Commissioners amend the 1996 Queen Anne's County Critical Area Program to authorize the premapping of areas intended for growth allocation in the Chester growth subarea in a manner consistent with the growth allocation map dated December 12, 1996 which is attached to this Resolution and incorporated herein with the exception that the property owned by the Nash family on Piney Creek Road, shown on the map as outside the area intended for growth allocation, be shown as intended for premapped growth allocation.

Dr. Foor then recognized Joseph Stevens, Esq., an attorney in Centreville, representing the owners of Pintail Point Farm. On behalf of the owners on Pintail Point Farm, Mr. Stevens has proposed amendments to the 1993 Comprehensive Plan and a substantial amendment to the Queen Anne's County Zoning Ordinance creating a new zoning district known as the "Rural Residential Planned Unit Development District (RRPUD)". Dr. Foor explained that Mr. Stevens had requested time before the Planning Commission to explain the general purposes of the draft amendments to the Comprehensive Plan and the Zoning Ordinance. Before Mr. Stevens began his presentation, Dr. Foor inquired whether proposals to amend the Comprehensive Plan could emanate from property owners or whether Comprehensive Plan amendments must be initiated by the Planning Commission. There followed a discussion among Mr. Stevens, Mr. Drummond, Mr. Kaii-Ziegler and members of the Planning Commission regarding the basis upon which a property owner might propose amendments to the Comprehensive Plan. It was Mr. Drummond's view that such amendments should be initiated by the Planning Commission as it is the Planning Commission's obligation under Article 66B of the Annotated Code of Maryland to propose and recommend Comprehensive Plans. Moreover, Comprehensive Plans are intended to have a "useful life" of 4-6 years to guide the County in its land use policies. If Comprehensive Plans were available for revision as a property owner felt appropriate or useful, the objective of providing for more long range goals and objectives might be undermined. Mr. Stevens expressed his view, on behalf of the owners of Pintail Point Farm, that an amendment to the Comprehensive Plan was no different than a draft amendment to a Zoning Ordinance which may be initiated by a property owner. Furthermore, Mr. Stevens argued that the Planning Commission could certainly agree to propose draft amendments to the Comprehensive Plan on behalf of an interested property owner. Agreeing to propose amendments did not necessarily mean the Planning Commission would ultimately recommend its adoption.